ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR07-921

March 5, 2008

MARK THOMAS ROY
APPELLANT

AN APPEAL FROM SEBASTIAN COUNTY CIRCUIT COURT
[G-CR-2003-134]

V.

HON. J. MICHAEL FITZHUGH, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Mark Thomas Roy appeals from the revocation of his suspended sentence. He argues that the trial court erred in not dismissing the State's petition to revoke his sentence because the evidence used against him was illegally seized when a police officer failed to obtain written consent to search his hotel room. We hold that the trial court did not err in revoking appellant's suspended sentence because he failed to challenge the trial court's independent finding that he violated the terms of his suspended sentence by failing to pay his fines, costs, and fees. Accordingly, we affirm.

Appellant received a thirty-six-month suspended sentence in January 2004 after pleading guilty to being a felon in possession of a firearm. Pursuant to conditions of his suspended sentence, appellant was to obey all laws. He was also ordered to pay a total of $880 in fines, fees, and costs, at the rate of $50 per month, beginning February 15, 2004.

In October 2006, the State filed a petition to revoke appellant's probation after he was

charged with possession of Oxycodone with intent to deliver, possession of Roxycodone, and possession of drug paraphernalia. The State also alleged that appellant failed to pay his fines, costs, and fees as directed. The revocation hearing was held on May 29, 2007.

The testimony adduced at the hearing established that the police investigated a report that a strange odor was coming from the motel room that appellant had entered. Responding Officer Dustin Treat informed appellant that he had the right to refuse a search and obtained appellant's oral consent to search the room. When Treat asked if there were any illegal items in the room, appellant responded affirmatively and admitted to possessing four spoons, two syringes, a small plastic bag containing what appeared to be marijuana, and eight white, unmarked pills. Consistent with his admission that he owned the contraband, appellant had fresh needle marks on his hands and arms. Laboratory analysis confirmed that the leafy substance was marijuana and that one of the pills was Oxycodone, and also identified approximately 1.5 grams of additional Oxycodone.

Also found was a bottle of Oxycontin containing only twelve pills, which should have contained seventy-eight pills. After being *Mirandized* and taken into custody, appellant was questioned by Narcotics Supervisor George Lawson, Jr., about the number of Oxycontin pills that were missing; appellant admitted that he was addicted to pain medicine and boasted that he could take as many as 100 pain pills in a single day. Although appellant had $691 in cash on his person, he denied that he sold any of the pills, insisting that he gave them to other people.

Contending that consent had been illegally obtained, appellant repeatedly objected to admission of the evidence that was seized during the search of the room and that was based on his inculpatory statement. Particularly, appellant objected because no written consent was obtained, which he argued violated *Brown v. State*, 356 Ark. 460, 156 S.W.3d 722 (2004).

Ultimately, appellant requested that the court deny the petition to revoke. The trial court consistently denied appellant's motions.

During the hearing, a payment ledger was also submitted showing that appellant failed to pay his fines, costs, and fees. The ledger, which was current as of the date of the hearing, showed that appellant had paid only $330, leaving a balance of $550. Further, the last payment was received in August 2004; thus, appellant had not made a payment in nearly three years.

The court dismissed the charge regarding possession of Oxycodone but nonetheless revoked appellant's suspended sentence, determining that appellant violated the terms of his sentence by possessing drug paraphernalia, particularly, the spoons, plastic bag, and syringes. Based on the payment ledger, the court also found that appellant failed to pay his fines, costs, and fees as ordered. It sentenced appellant to six years' incarceration.

To revoke a suspended sentence, the burden is on the State to prove the violation of a condition of a suspended sentence by a preponderance of the evidence. *See* Ark. Code Ann. § 5-4-309(d) (Repl. 2006). On appellate review, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. *See Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002). Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient to revoke a suspended sentence. *Id*. Since determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the trial judge's superior position to assess those matters. *Id*.

Here, we affirm because appellant fails to challenge the trial court's independent finding that he violated the conditions of his suspended sentence by failing to pay fines, fees, and costs. *See Rudd v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001). The State is required

to prove that a defendant violated only a single term of his suspended sentence, which was proven here by the admission of the payment ledger reflecting that appellant had not made a payment since August 2004, and still owed $550 dollars. Even *de minimis* violations may support revocation of a probationary sentence. *See Simmons v. State*, 13 Ark. App. 208, 681 S.W.2d 422 (1985).

While we affirm as forenoted, we also note that appellant's arguments based on *Brown*, *supra*, would fail. First, the exclusionary rule applies in revocation proceedings only where the police have acted in bad faith, which was neither alleged nor proven here. *See Cook v. State*, 59 Ark. App. 24, 952 S.W.2d 677 (1997).

Second, even if the exclusionary rule did apply, appellant misreads *Brown*. The *Brown* court recognized that, in cases involving the warrantless search of a home, it is the better practice for the police to execute a written consent form informing the party of his right to refuse consent to a search of his home, but the court expressly refused to require the police to obtain written consent. *See Brown, supra*, at 474, 156 S.W.3d at 732.

Similarly, the police are required to obtain consent from the occupant of a motel room and to inform him that he has the right to refuse consent. *See Woolbright v. State*, 357 Ark. 63, 160 S.W.3d 315 (2004). Nonetheless, *Brown* and its progeny require only that the State obtain clear and unequivocal consent, which was obtained here because appellant concedes that he orally consented to the search of the motel room.

Affirmed.

VAUGHT and BAKER, JJ., agree.